IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1354 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RIBKABEN VITTHALBHAI PARMAR - Appellant(s)

Versus

SHARDA SHISHU VIHAR AND PRIMARY SCHOOL - Defendant(s)

==========

Appearance :
MR NJ SHAH for MR HJ NANAVATI for Appellant
MR JV MEHTA for the respondent.

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 06/12/2005

ORAL JUDGMENT

1. This appeal arises out of judgment and decree rendered by the learned Judge of Court No.7, City Civil Court, Ahmedabad, on 30th November, 1984, in Civil Suit No.2603 of 1983.

2. The appellant was the plaintiff before the Trial Court. The suit was filed for a declaration that the order passed by the respondent on 21st March, 1983, terminating the services of the appellant-plaintiff with the defendant-school is illegal and invalid along with other incidental reliefs.

2.1 According to the appellant, the respondent is an approved school under the Bombay Primary Education Act, 1947 and gets benefits of a grant-in-aid educational institution in accordance with law. The appellant came to be appointed as an Assistant Teacher with the respondent school on 19th August, 1974. She passed her Vernacular Final and her P.T.C. (Junior) examinations. In the year

1983, she was entitled to a total monthly remuneration of Rs.701/-. However, she was being paid Rs.385/- per month by the defendant-school, but she was required to pass a receipt for Rs.701/- per month. As she demanded her full emoluments from the Manager of the school, the management went against her and she was not permitted to put her signature in the Muster Roll from 23rd September, 1982. It is the case of the appellant that, she was transferred to another school named as Swastik Shishu Vihar, situated in Parvatinagar, also run by the same management. She was again brought back to the defendant school with effect from 4th March, 1983 in the morning shift. She was, however, not allowed to sign the Muster Roll though she attended the school with effect from 4th March, 1983. The appellant, therefore, made a representation to the Director of Education on 9th March 1983 by Registered Post A.D. and endorsed a copy to the District Education Officer, Ahmedabad. Annoyed with this, the respondent-school management terminated the services of the appellant by order dated 21st March, 1983, on the ground of her

alleged absence from work and, therefore, the suit came to be filed to challenge the termination of services on various grounds indicated in the plaint.

3. The respondent resisted the suit by filing written statement, Ex.11, on various grounds. The main defence of the respondent in the written statement was that of denial of the allegations and absenteeism on part of the appellant.

4. The Trial Court, after considering the pleadings of parties, framed issues as under :-

"(1) Does the plaintiff proved that she was paid Rs.385/- per month by way of all inclusive salary as against her entitlement of Rs.701/- per month in all?

(2) Does the plaintiff prove that her termination from service by an order passed on 21st March, 1983 is illegal and invalid?

(3) Does the defendant prove that this Court has no jurisdiction to try this suit?

(4) Does the defendant prove that the suit is bad on account of non-joinder of necessary parties?

(5) What relief or reliefs, if any, is the plaintiff entitled to claim in this suit?

(6) What final order and decree?"

4.1 The Trial Court's findings on the issues are as under :-

"(1) In the affirmative.

(2) In the affirmative.

(3) In the negative. This Court does have jurisdiction to try this suit.

(4) In the negative.

(5) As per the final order.

(6) As per the final order."

4.2 The Trial Court, ultimately, came to a conclusion that no statutory right of the appellant was violated and, therefore, the suit cannot be decreed. A teacher serving in a school has no right to enforce any condition prescribed for grant of recognition or payment of grant-in-aid and, therefore, the appellant's suit was dismissed with no order as to costs.

5. Aggrieved by this judgment and order, the present appeal is preferred.

6. Learned Advocate, Mr. N. J. Shah, appearing for Mr. H. J. Nanavati for the appellant, drew the attention of this Court to the Model Conditions of Employment prescribed under Clause 13 of Schedule-F of the Bombay Primary Education Rules, 1949 read with Rule 106(2) of the said Rules. He, therefore, submitted that a teacher would be protected under Clause 13 of Schedule-F of the said Rules statutorily and the learned Judge was, therefore, in error in dismissing the suit on this solitary ground when the

learned Judge has come to a conclusion in favour of the appellant on other factual aspects. Mr. Shah, therefore, submitted that this appeal may be allowed.

6.1 Learned Advocate, Mr. Shah, placed reliance on the following decisions :-

(1) Kumari Regina v. St. Aloysius Higher Elementary School & Another, AIR 1971 SC 1920.

(2) Shivprasad Umashanker v. Municipality of Palitana, 1997(2) GLR 1460.

(3) Shri Safal Kelvani Mandal & Ors. v. State of Gujarat & Ors., 1984(2) GLR 1488.

(4) Gujarat State Road Transport Corporation v. Ravji Tapubhai Goti, 1998(2) GLR 1418.

7. The appeal is opposed to by learned Advocate, Mr.

J. V. Mehta. He submitted that the suit is one under the Specific Relief Act and contract of service could not be specifically enforced. The appellant has no statutory right, as has been held by the Trial Court. Mr. Mehta submitted that Schedule-F under the Rules decides only the eligibility criteria and expectations from the grant-in-aid institutions and violation of the provisions of the Schedule may entail discontinuance of grant-in-aid at the most. It would not invest the teachers with any statutory right and, therefore, the appellant, at the most, could have claimed damages. He, therefore, submitted that the appeal may be dismissed.

8. The question, therefore, which arises for determination by this Court is whether Clause 13 of Schedule-F of the Bombay Primary Education Rules, 1949 can be considered to grant any statutory protection to the appellant or not.

8.1 For that purpose, it would be appropriate, firstly, to refer to Rule 106(2) of the Bombay Primary Education

Rules, 1949, which runs as under :-

"106. (A) Application for recognition :- (1) A person who desires to impart primary education by establishing a private primary school from the commencement of the new academic year, shall apply on or before last date of October of the previous academic year to the 'Authorised Officer' in Form 'AA' in Appendix 'C' appended to these rules as provided in sub-rule (2) of this rule.

(2) Every application under sub-rule (1) of this rule shall be sent to the authorised officer by registered post with acknowledgement due together with an undertaking in writing that the conditions of employment of the staff in the private primary school shall be those as specified in Schedule 'F' appended to these rules together with a fee of Rs.500-."

8.2 It would also be appropriate to refer to Clause 13 of Schedule-F of the said Rules, which runs as under:-

"13. (1) Termination of service of Teacher :- The

management of a private school shall not terminate otherwise than a measure of penalty the services of any permanent trained teachers without the previous permission of an Administrative Officer.

(2) A permanent trained teacher whose services are terminated with the permission of the Administrative Officer after three years of this service, shall be entitled to a compensation-

(a) equal to 6 months' salary including allowances if the employee has put in service in the school for period not exceeding five years; and

(b) equal to six months' salary including allowances for the first five years and a month's salary for every years of the period exceeding five years, if the employee has put in service in the school for a period exceeding five years:

Provided that total compensation payable under clause (a) or (b) shall not exceed twelve months' salary including allowances:

Provided further that in the case of a teacher an Inquiry Committee shall be constituted consisting of the following persons, namely :-

(i) one representative of the management;

(ii) the Head Master of the School; and

(iii) a representative of the concerned teacher, and accordingly the formal inquiry against the teacher shall be held by the said committee instead of the management or an enquiry officer as if where the context so requires for the words 'the management' or 'inquiry officer' the word 'Enquiry Committee" had been substituted."

It is clear that Schedule-F prescribes model conditions of employment of staff in private schools in the State of Gujarat. Section 106 requires that a person who desires to impart primary education by establishing primary school has to apply to the Authorised Officer in Form-AA in Appendix-C, as provided in sub-rule (2). Sub-rule (2) of Rule 106 requires that every such application under sub-

rule (1) shall be sent to the Authorised Officer by Registered Post A.D. together with an undertaking in writing that the conditions of employment of the staff in the private primary school shall be those as specified in Schedule-F appended to the rules together with requisite fees. Sub-rule (3) provides that no application for recognition shall be entertained unless it is duly made in Form-AA in Appendix-C and the same is accompanied by undertaking and requisite fees.

9. It is, thus, clear that Rule 106 of the said rules deals with the question of recognition of primary educational institutions and requires that an undertaking has to be given along with the application that conditions of employment would be as per Schedule-F. If this is is not there, recognition may not be given.

10. If, after an undertaking is given and if any of the terms or conditions are committed breach of, it may entitle the authorities to take appropriate steps in respect of recognition or derecognition, etc. of the institution.

Differently put, these provisions decide rights and duties *inter se* between the authorities and the management of the educational institutions. It invests the authorities with certain rights. However, the teachers or the employees are not, statutorily, invested with any such right, which would entitle them to take a legal recourse in the event of breach thereof. In this regard, decision in the case of **Jayantial Ratilal Thakkar v. State of Gujarat & Ors., as reported in 1976 GLR 461**, which is again approved in **2004(1) SCC 612**, can be profitably considered. It was observed thus :

> *"In the matter of security of tenure, there is no statutory protection which a primary teacher or a Head Master of a primary school run by a private body or a trust enjoys. There is no provision in the Bombay Primary Education Rules which implies a statutory protection in the matter of tenure of service of teachers and head masters of private primary schools. If he has no statutory right, he cannot seek enforcement of a non-statutory right by invoking the constitutional jurisdiction of the High Court. So far as a primary teacher is concerned, his security of tenure is governed*

by the relation of master and servant or by contract. The contractual obligations between master an servant or between an employer and an employee cannot be enforced by a writ of the High Court, under Article 226 or 227 of the Constitution."

It is, thus, clear that a primary teacher does not enjoy a statutory protection on the question of tenure of service.

10.1 It was canvassed by learned Advocate, Mr. Shah, that this judgment was delivered prior to the amendment by inserting Section 40-B in the Bombay Primary Education Act. It may be so because the said amendment was introduced by Gujarat Act No.24 of 1986, which was published in the Official Gazette on 13th September, 1986 after receiving ascent of the President. However, that should not make any difference so far as present case is concerned in the sense that the order under challenge is of 1983, which is prior to the amendment of 1986 and, therefore, the said judgment would be applicable in the facts of the present case. In such a situation, it cannot be

said that the learned Judge committed an error in holding that the appellant has no statutory right which she could have enforced through Civil Court.

10.2 The learned Judge was also right when he came to a conclusion that the grievance of the plaintiff is in the nature of breach of contract of personal service and in light of decision of the Apex Court in **Sirai Municipality by its president, Sirai v. Cacalia Kam Francis Bellis, reported in A.I.R. 1973 SC 855**, the plaintiff-appellant cannot seek redressal in a Civil Court.

11. As a consequence, although the findings on factual aspects of allegations against the respondent made by the plaintiff are in favour of the plaintiff-appellant, the suit was rightly dismissed and the appeal also, unfortunately, meet the same fate.

12. Learned Advocate, Mr. Shah, placed reliance on

decision in the case of **Kumari Regina v. St. Aloysius Higher Elementary School and Another, AIR 1971 SC 1920**. He relied on observations in paragraphs 9 and 12 of the judgment.

12.1 In this very judgment, in paragraph 12, it is observed that *"Ordinarily, the relations between the management of an elementary school and the teachers employed in it would be governed by the terms of the contract of employment and the law of master and servant in the absence of any statute controlling or abrogating such a contract of employment and providing to the contrary."* In the instant case, the appellant is unable to show that the right asserted by the appellant is statutory. The result is that the relations between the appellant and the respondent is to be regarded as being governed by the contract of employment. Clause 13 to Schedule-F cannot be regarded as having the status of statutory rules investing the appellant with statutory rights. The view of this Court is supported by the

fact that, subsequently, in 1986, the Act came to be amended and Section 40-B came to be added, which takes care of protection of the tenure of the teachers of a recognized private primary school. If clause 13 was to protect the service tenure of such teachers, such amendment would not have been introduced. The decision, therefore, cannot help the appellant.

12.2 Learned Advocate, Mr. Shah, then placed reliance on decision in the case of **Shivprased Umashanker v. Municipality of Palitana, 1997(2) GLR 1460**, where, in head note (D), it is observed that *Municipality cannot resort to power of employer under general law of master and servant and power under General Clauses Act to terminate service of Chief Officer,* as Sections 47 to 50 of the Municipalities Act constitute a self-contained Code with regard to the appointment and termination of Chief Officer. Similar being not the situation, the said decision cannot be of any help to the appellant.

12.3 Reliance was also placed on the decision in the case between **Shri Safal Kelvani Mandal & Ors. v. State of Gujarat & Ors. (supra)**, where it is decided that amended Rules and Schedule-F would apply even to schools recognized prior to coming into force of the amendment. This cannot advance the case of the appellant any further for the reason that there is no dispute on applicability of Schedule-F to the respondent-school. The question is whether Schedule-F invests on the appellant any statutory right or not and, as discussed above, it does not. Therefore, the decision cannot be of any help to the appellant.

12.4 The last decision, which is relied on by learned Advocate, Mr. Shah, is on the question of jurisdiction of Civil Court. Since the Trial Court has given a finding in favour of the appellant, that decision is not required to be gone into.

13. For the foregoing reasons, the appeal must fail and stands dismissed. Judgment and order of the Trial Court is hereby confirmed. No costs.

[A. L. DAVE, J.]

gt